IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

Bail Appl..No. 5217 of 2007()

CRIME NO.550/04 OF THE MEDICAL COLLEGE POLICE STATION

PETITIONERS

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1. HEMACHANDRAN, S/O.MURALIDHARAN NAIR,
   AGE 29, T.C. 6/2262, VALIYAVILA,
   VATTIYOORKAVU, THIRUVANANTHAPURAM.

2. SURESH, AGE 26, S/O.SURENDRAN NAIR,
   'DEEPASREE', SRA-2, ELLIPODU,
   THIRUMALA, THIRUVANANTHAPURAM.

BY ADV. SRI.SASTHAMANGALAM S. AJITHKUMAR
SRI.SHAJIN S.HAMEED

RESPONDENTS:

STATE OF KERALA - REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 10/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 5217 of 2007

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Dated this the 10th day of September, 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 4 and 5 in a crime registered, inter alia, under Section 308 r/w. 149 I.P.C. and the provisions of the Arms Act. The alleged incident took place on 6.10.2004. Students belonging to rival political organisations were allegedly involved in an incident which took place on that day. The petitioners are not named in the F.I.R. Accused 1 to 3 alone have been named. Investigation is in progress. The petitioners have not been arrested so far. They apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. They have been brought on the array of accused later with vexatious intent. The allegation under Section 308 I.P.C. is not justified at all. The said allegation has been raised solely with the intention of vexing and harassing the petitioners and only to ensure that the petitioners are denied bail for as long a period as possible. In these circumstances it is prayed that directions under Section 438 Cr.P.C. may be issued in favour of the petitioners.

3. Notice was given to the learned Prosecutor. The learned Prosecutor opposes the application. The learned Prosecutor was requested to narrate to the court the details of the injuries suffered by the victims. Admittedly the incident had taken place in 2004. Admittedly the petitioners are not named in the F.I.R. They have not been arrested so far also. Taking all the circumstances into account, notwithstanding the opposition raised by the learned Prosecutor, I am satisfied that this is a fit case where directions under Section 438 Cr.P.C. can be issued in favour of the petitioners. In coming to this conclusion I take note of the fact that sufficient materials to justify the allegation under Section 308 I.P.C. do not appear to be available prima facie.

4. In the result:

(1) This application is allowed.

(2) The following directions are issued under Section 438 Cr.P.C.

(a) The petitioners shall surrender before the learned Magistrate on 17.9.2007 at 11 a.m. The learned Magistrate shall release the petitioners on regular bail on condition that they execute bonds for Rs.25,000/- (Rupees twenty five thousand only) each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(b) The petitioners shall make themselves available for interrogation before the Investigating Officer between 10 a.m. and 3 p.m. on 18.9.07 and 19.9.2007 and thereafter shall appear on all Mondays and Fridays between 10 a.m. and 12 noon for a period of two months and subsequently as and when directed by the Investigating Officer in writing to do so.

(d) If the petitioners do not appear before the learned Magistrate as directed in clause (1) above, these directions shall lapse on 17.9.06 and the police shall be at liberty thereafter to arrest the petitioners and deal with them in accordance with law.

(b) If the petitioners were arrested prior to their surrender on 17.9.2006 as directed in clause (1) above, they shall be released on bail on their executing bonds for Rs.25,000/- each without any surety undertaking to appear before the learned Magistrate on 17.9.2007.

(R. BASANT)
Judge

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